

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: RON LUDWIG, Complainant, v. LEAST COST ROUTING, INC., Respondent.	DOCKET NO. FCU-00-5 (C-00-148)
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE
AND NOTICE OF HEARING**

(Issued September 20, 2000)

On April 10, 2000, Mr. Ron Ludwig filed an informal complaint with the Utilities Board (Board) regarding his long distance telephone service, pursuant to Iowa Code Supplement § 476.103(1999). In his complaint, Mr. Ludwig alleged his long distance service at his home and his business had been slammed by Least Cost Routing, Inc. (Least Cost Routing) in November of 1999. Mr. Ludwig's preferred interexchange carrier was Sprint. Mr. Ludwig alleged that the caller from Least Cost Routing represented that he worked for Sprint and was selling a billing service. In February 2000, Mr. Ludwig realized his per minute costs were higher and learned his long distance carrier had been switched to Least Cost Routing. Mr. Ludwig stated he called Least Cost Routing and complained, and the company agreed to switch him

back and pay the difference between his Sprint costs and his Least Cost Routing costs.

Mr. Ludwig filed an informal complaint with the Board because he stated the process was taking a long time and he did not trust the company to do what they said they would. He also stated he felt the company's deception was illegal and should be stopped.

The complaint was docketed as C-00-148, and handled as an informal complaint. In a letter filed with the Board on May 1, 2000, Least Cost Routing alleged that it uses the services of an independent third-party verification service, that Mr. Ludwig had been properly informed that his long distance service would be switched to Least Cost Routing, and provided a tape of the conversation. (A transcript of the taped conversation prepared by Board staff David Lynch is attached to this Order.)

Staff then played the tape of the conversation for Mr. Ludwig, who stated it was his voice on the tape but that the whole conversation was not on the tape. Staff also sent a letter to Mr. Ludwig stating the information on the tape appeared to authorize the switch and that unless he provided additional information, the file would be closed.

Mr. Ludwig sent a letter to the Board on May 8, 2000, in which he stated that the tape was incomplete and did not include the part of the conversation when the caller stated he worked for Sprint. He stated his permission was only for streamlining

the billing process, not to switch long distance carriers. He requested reconsideration of the case.

On May 19, 2000, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a letter in support of Mr. Ludwig's request for reconsideration. The Consumer Advocate stated the taped verification did not refute Mr. Ludwig's contention that the tape was incomplete and Least Cost Routing had misled him as to its identity and the service it was marketing. The Consumer Advocate further stated that Least Cost Routing had not addressed these points in its letter. The Consumer Advocate stated that Least Cost Routing should have to address Mr. Ludwig's allegations concerning the untaped portion of the telephone call and all requirements listed in 47 C.F.R. § 64.1150(d). The Consumer Advocate stated that it was not possible to determine from Least Cost Routing's response whether Mr. Ludwig's consent was obtained from an appropriately qualified independent third party, and requested that in the Board's reconsideration of the complaint, Least Cost Routing be directed to address these issues.

Board staff requested that Least Cost Routing respond to the letter from the Consumer Advocate on May 25, 2000. Least Cost Routing responded by letter filed June 8, 2000. In the letter, Least Cost Routing stated nothing in the Consumer Advocate's letter or Mr. Ludwig's request for reconsideration warranted reconsideration. Least Cost Routing stated its employees do not engage in the practices alleged by Mr. Ludwig and that it randomly monitors its sales calls to ensure compliance with company policy to engage in fair and honest sales practices.

Least Cost Routing stated Mr. Ludwig was informed his long distance service would be switched, there would be a switching fee, and there was a minimum billing requirement. Least Cost Routing further stated it uses the services of The Verification Company, Inc., a qualified independent third party pursuant to 47 C.F.R. § 64.1150(d), for third party verification of change requests. Least Cost Routing stated it had acted according to federal and state law, but as a gesture of good faith, offered to re-rate Mr. Ludwig's calls to the rate of his preferred carrier upon receipt of documentation that would permit the necessary calculations.

On June 12, 2000, Mr. Ludwig submitted a letter in response stating that the tapes were doctored and that there was no verification company that asked him if he had agreed to change his long distance carrier. He also stated his long distance service at home was again switched to Least Cost Routing. Least Cost Routing responded that the bill was for a charge dated March 24, 2000, that the initial complaint had not been filed until April 5, 2000, and therefore the bill should have been included in the initial complaint.

In a memo dated June 27, 2000, Board staff requested the Board docket the case as a formal complaint proceeding and consider imposition of civil penalties. In a second memo dated July 20, 2000, Board staff provided answers to questions the Board asked and stated a third memo would be forthcoming.

On August 31, 2000, the Board issued an Order Initiating Formal Complaint Proceeding and Assigning to Administrative Law Judge. In the Order, the Board found that Least Cost Routing's response was inadequate in several respects and

there was reasonable ground for further investigation of the complaint. The Board docketed the matter as a formal complaint proceeding and assigned the case to the undersigned administrative law judge. Because the informal complaint file was closed, and the case is now docketed as a formal complaint proceeding, Board staff will not issue a third memo as stated in the memo dated July 20, 2000.

Pursuant to Iowa Code § 476.3(1)(1999) and 199 Iowa Admin. Code § 6.5, a hearing regarding this complaint will be held.

The statutes and rules involved in this case include Iowa Code §§ 476.3, 476.33(1999), Iowa Code Supplement § 476.103(1999), and Utility Division rules at 199 IAC §§ 1.8, 22.23, and Chapters 6 and 7.

The issues. The issues in this case generally involve the change of Mr. Ludwig's long distance telephone carrier from Sprint to Least Cost Routing. More specifically, one issue is whether Least Cost Routing complied with state and federal law when it changed Mr. Ludwig's service. Other issues are listed on page 5 of the Board's August 31st Order. These issues relate to the inadequacy of Least Cost Routing's response and the taped recording. Another issue is whether a civil penalty should be imposed on Least Cost Routing pursuant to Iowa Code Supplement § 476.103(4)(1999) and 199 IAC § 22.23(5). Other issues may be raised by the parties prior to and during the hearing.

According to Iowa Code Supplement § 476.103(4)(1999) and 199 IAC § 22.23(5), a civil penalty may only be imposed after notice and an opportunity for hearing. This Order Establishing Procedural Schedule and Notice of Hearing

constitutes such notice that a civil penalty may be imposed after hearing if it is found that Least Cost Routing violated a statute or rule of the Board and if the circumstances warrant such imposition.

Prepared testimony and exhibits. All parties will have the opportunity to respond and present evidence and argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4)(1999). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8) (1999).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3)(1999). This procedure also tends to shorten the length of the hearing and spares the parties the expense and inconvenience of additional hearings. If the parties want an

example of prefiled testimony to review while preparing their own, they should call Jean Mathis at (515) 281-3448 and request an example of prefiled testimony.

Party status. Mr. Ludwig, the Consumer Advocate, and Least Cost Routing are the parties to this proceeding. Currently, Mr. Ludwig and Least Cost Routing are unrepresented by legal counsel. Attorney Jennifer C. Easler will represent the Consumer Advocate.

Each party must file an appearance identifying one person upon whom the board may serve all orders, correspondence, or other documents. The written appearance should substantially conform with 199 IAC §2.2(15). It should include the docket number of this case as stated in the caption above. Appearances should be filed at the earliest practical time with the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance should be accompanied by a certificate of service that conforms to 199 IAC §2.2(16) and verifies that a copy of the document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of that communication should also be sent at the same time to each of the other parties to this proceeding. These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

Pursuant to 199 IAC § 6.7 and the Board Order dated August 31, 2000, the written complaint and all supplemental information from the informal complaint

proceedings, identified as Docket No. C-00-148, are a part of the record of this formal complaint proceeding. Although the staff memo dated June 27, 2000 at page 4 refers to twelve other complaints involving Least Cost Routing, the twelve other complaints are not a part of the record in the informal complaint proceedings of this case and are not yet a part of the record in this case.

The materials that have been filed in this docket are available for inspection at the Board Records Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records Center at (515) 281-5563. There will be a charge to cover the cost of the copying.

All parties should examine Iowa Code §§ 476.3, 476.33(1999), Iowa Code Supplement § 476.103(1999), and Utility Division rules at 199 IAC §§ 1.8 and 22.23, and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

Attached to this Order and Notice of Hearing is a document that discusses the ex parte communication laws as they apply to this case.

IT IS THEREFORE ORDERED:

1. On or before October 4, 2000, Mr. Ludwig must file prepared direct testimony and exhibits. Mr. Ludwig's prepared direct testimony may refer to any document already in the record, and he does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In his prepared testimony and exhibits, Mr. Ludwig must address the issues discussed above and file any other evidence not previously filed that he believes will support his case.

2. If the Consumer Advocate is going to file prepared testimony or exhibits, it must do so by October 4, 2000, and may also refer to evidence already in the record without refiling exhibits.

3. On or before October 18, 2000, Least Cost Routing must file prepared responsive testimony and exhibits. Least Cost Routing may refer to any document already in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, Least Cost Routing must address the issues discussed above and file any other evidence not previously filed that it believes will support its case.

4. If Mr. Ludwig or the Consumer Advocate are going to file prepared rebuttal testimony and exhibits, they must do so by November 1, 2000.

5. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, Iowa Utilities Board Office, 350 Maple Street, Des Moines, Iowa, on November 9, 2000, commencing at 10:00 a.m. The parties should plan to come to the hearing room at 9:45 a.m. to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

6. If required, a briefing schedule will be arranged at the conclusion of the hearing.

7. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record

of these proceedings. Pursuant to 199 IAC § 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Utilities Board at the earliest possible time.

8. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC § 7.2(7). The person must file a petition to intervene on or before twenty days following the date of issuance of this Order, unless the petitioner has good cause for the late intervention. 199 IAC § 7.2(8).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

Dated at Des Moines, Iowa, this 20th day of September, 2000.

C-00-148, Horizons Unlimited of Palo Alto v. Least Cost Routing, Inc.
Transcript of Verification Call, September 23, 1999

Unidentified: ...information with you on tape as a matter of record, is that OK with you?

Ludwig: Yes.

Un.: OK, the date is September 23rd at 4:30, this is Ron Ludwig, the CEO there for Horizons Unlimited, _____, Emmetsberg, Iowa?

Ludwig: Yes.

Un.: The phone number there is 712-852-2211?

Ludwig: Yes.

Un.: And how about how much would you say your long distance bills average _____ there?

Ludwig: About 35 dollars.

Un.: As a security measure, I need your date of birth to verify that I did speak with you.

Ludwig: 2/12/56.

Un: OK, and then you also have the location at 704 Palmer Street in Emmetsburg, and that is your residence, and that's 712-852-3406?

Ludwig: Yes.

Un: And then you also have the location at 2201 Twenty-Third Street, Emmetsburg, that's Horizons Unlimited, and that's 712-852-4495?

Ludwig: Yes.

Un.: And you have a location at 1901 Pleasant Street, and that is 712-852-2404?

Ludwig: Yes.

Un.: And you have the location at 1501 Palmer in Emmetsberg, that's 712-852-4722?

Ludwig: Yes.

Un.: And the location at 102 ____ Street, Emmetsberg, and that is 712-852-4143, correct?

Ludwig: Yes.

Un.: Do you have authority and are you now authorizing for all the locations, sir, to be switched to Least Cost Routing long distance _____ your local telephone bill, correct?

Ludwig: Yes.

Un.: And there is no service fee as long as you have at least 25 dollars in long distance, if your billings fall below that, they only charge you up to 5 dollars, but if your local telephone company charges you any additional fee for the service, call the 800 number on the bill where it says "Least Cost Routing" and that will be credited back to you, OK?

Ludwig: OK..

Un.: Thank you and have a good day now. Bye-bye.

Ludwig: Bye.

Transcribed by David J. Lynch on August 25, 2000.

EX PARTE COMMUNICATION

What is ex parte communication?

Ex parte communication is either:

1) when one party in a contested case communicates with the judge without the other parties being present, or

2) when the judge in a contested case communicates with one party without the other parties being present.

In order to be prohibited, the communication must be about the facts or law in the contested case. Calls to the Utilities Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written.

How does this affect me?

Iowa law prohibits ex parte communication. The reason ex parte communication is prohibited is a) to prevent any opportunity for one party to try to influence the judge without all parties being present; and b) to allow all parties to know the information the judge has received, so they have the opportunity to rebut the information if they wish to. In Iowa Utilities Board contested cases, the parties are usually a utility company, the Consumer Advocate, and a person who is or will be affected by an action of the utility company. Ex parte communication rules apply to all of these parties.

When you are a party in a contested case before the Iowa Utilities Board, you may not communicate about the case with the administrative law judge or Board members assigned to hear your case, unless the other parties are given

the opportunity to be present. Under the ex parte statute, the other parties also will not be able to communicate with the judge and Board members without you knowing it.

What should I do?

We know that you will need to communicate with us either in writing or orally about your case, so we offer the following suggestions so that you do not violate the ex parte communication law.

1) If you fax, send, or deliver a written document about your case to the Iowa Utilities Board, you should fax, send, or deliver a copy to the other parties at the same time. In your filing with the Board, you must list the persons who you sent a copy to on the filing. However, persons filing an objection with the Board in electric transmission and pipeline cases only need to file their objection with the Board, and do not need to send copies to the other parties.

2) If you have a question about your case, you may call Jean Mathis at (515)281-3448. Mrs. Mathis can only answer general questions about contested case procedure. For example, if you want to know what is going on with your case, Mrs. Mathis can tell you. She cannot answer questions like “What are my chances for success if I file an objection or a complaint?”

Mrs. Mathis may refer you to another person at the Utilities Board who may be able to help you with some of your questions. However, some questions are specific to your case and require legal advice. Utilities Board staff cannot give you legal advice. An example of a legal advice question is “Did the utility

company act legally in this situation and should I file an objection or a complaint?" For those questions, you should talk with your own lawyer.

3) There may be a need for one of the parties in a contested case to speak with the administrative law judge or a Board member prior to the hearing. This will not be true very often. If it is, you should either:

- a) send a letter to the Utilities Board telling us the situation and why you need to have a telephone conference call with the judge; or
- b) call Mrs. Mathis and tell her.

If you do this, you should let the other parties know you are doing it, either orally or in writing. If a conference call is needed, we will schedule one, and all parties will be told when the conference call will be held.

One final note.

The ex parte communication rules mean that you will be given the opportunity to participate when one of the parties wishes to speak to the judge. Therefore, if you receive a notice, either orally or in writing, that a telephone conference call will be held, you should be sure to participate. If the time for the conference call will not work for you, call Mrs. Mathis as soon as you get notice of the call. The time may be changed to accommodate all parties. If you do not request a change, or do not participate, the call will be held in your absence. This will not violate the ex parte communication rules, because you were given the opportunity to participate.